

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 118 of 1991

with

INCOME TAX REFERENCE No 142 of 1991

and

INCOME TAX REFERENCE Nos. 8, 13, 22 and 105 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

K S LOKHANDWALA FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 118 of 1991
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these References at the instance of the revenue, the following question has been referred for our opinion in respect of assessment years 1982-83, 1983-84 & 1984-85, 1981-82, 1982-83, 1985-86 and 1977-78 & 1978-79 respectively:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the I.T.O. to make the assessment in the hands of the assessee-trust on a substantive basis?"

2. We have heard Mr Akil Kureshi learned counsel for the revenue and Mr RK Patel learned counsel for the respondent-assessee.

3. The assessee is a trust. The assessment of the assessee-trust was computed on protective basis and it was held that the income was to be assessed substantively in the hands of one Shri Faridahmed Abdulsamad, the Managing Trustee of the trust. The CIT (Appeals) and the Tribunal held that the assessee-trust had to be assessed on substantive basis, and not the Managing Trustee.

4. In the case of the Managing Trustee in Income Tax Reference No.202 of 1986 on 13th August, 2001, we have declined to answer the question raised in that reference in view of the facts not being clear in the said reference. In light of this position, we decline to answer the question referred in the present references.

5. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta, J)

zgs/-